

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM: *dw* Alisa Somera, Legislative Deputy Director
for Land Use and Transportation Committee

DATE: March 26, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Tang on March 20, 2018:

File No. 180268

Ordinance amending the Planning Code to authorize the Zoning Administrator to waive or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), allow more than one unauthorized unit constructed without a permit to be legalized, exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, allow conversion of an existing stand-alone garage or storage structure to an ADU and expansion of the existing building envelope to add dormers, eliminate the street tree requirement for an ADU, and allow one ADU to be added to a new residential building of three units or less as a component of the new construction; amending the Building Code to provide for a preapplication plan review for ADUs; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this ordinance to the California Department of Housing and Community Development.

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection

1 [Planning, Building Codes - Accessory Dwelling Units]

2
3 **Ordinance amending the Planning Code to authorize the Zoning Administrator to waive**
4 **or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), allow**
5 **more than one unauthorized unit constructed without a permit to be legalized, exempt**
6 **from the permit notification requirement ADUs constructed within the defined existing**
7 **built envelope, allow conversion of an existing stand-alone garage or storage structure**
8 **to an ADU and expansion of the existing building envelope to add dormers, eliminate**
9 **the street tree requirement for an ADU, and allow one ADU to be added to a new**
10 **residential building of three units or less as a component of the new construction;**
11 **amending the Building Code to provide for a preapplication plan review for ADUs;**
12 **affirming the Planning Department’s determination under the California Environmental**
13 **Quality Act; making findings of consistency with the General Plan, and the eight**
14 **priority policies of Planning Code, Section 101.1; adopting findings of public necessity,**
15 **convenience, and welfare under Planning Code, Section 302; and directing the Clerk to**
16 **send a copy of this ordinance to the California Department of Housing and Community**
17 **Development.**

18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Board amendment additions** are in double-underlined Arial font.
22 **Board amendment deletions** are in ~~strikethrough Arial font~~.
23 **Asterisks (* * * *)** indicate the omission of unchanged Code
24 subsections or parts of tables.

25 Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

1 (a) The Planning Department has determined that the actions contemplated in this
2 ordinance comply with the California Environmental Quality Act (California Public Resources
3 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
4 Supervisors in File No. _____ and is incorporated herein by reference. The Board
5 affirms this determination.

6 (b) On _____, the Planning Commission, in Resolution No. _____,
7 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
8 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
9 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
10 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
12 ordinance will serve the public necessity, convenience, and welfare for the reasons stated in
13 Planning Commission Resolution No. _____.

14 (d) Pursuant to Charter Section D3.750-5, the Building Inspection Commission
15 considered this ordinance at a duly noticed public hearing held on _____, 2018.

16
17 Section 2. The Planning Code is hereby amended by revising Sections 102, 138.1,
18 140, 155.1, 207, 207.3, 307, and 317, to read as follows:

19 **SEC. 102. DEFINITIONS.**

20 * * * *

21 **Dwelling Unit, Accessory.** Also known as a Secondary Unit or In-Law Unit, is a
22 Dwelling Unit that is constructed *either* entirely within the existing built envelope, the "living
23 area" as defined in State law, or the buildable area of an existing building in areas that allow
24 residential use; or *is constructed* within the existing built envelope ~~or buildable envelope~~ of an
25 existing and authorized auxiliary structure on the same lot.

1 * * * *

2 **SEC. 138.1. STREETScape AND PEDESTRIAN IMPROVEMENTS.**

3 * * * *

4 (c) **Required streetscape and pedestrian improvements.** Development projects
5 shall include streetscape and pedestrian improvements on all publicly accessible rights-of-way
6 directly fronting the property as follows:

7 (1) **Street trees.** Project Sponsors shall plant and maintain street trees as
8 set forth in Article 16, Sections 805(a) and (d) and 806(d) of the Public Works Code; *provided,*
9 *however, that a street tree or trees shall not be required for an ADU authorized to be constructed*
10 *pursuant to Section 207(c)(4) or 207(c)(6) of this Code.*

11 * * * *

12 **SEC. 140. ALL DWELLING UNITS IN ALL USE DISTRICTS TO FACE ON AN OPEN**
13 **AREA.**

14 * * * *

15 (c) **Exceptions.**

16 (1) For historic buildings identified in Section 307(h), and for the conversion
17 of a nonconforming use in an existing building to a Residential Use in a district where the
18 Residential Use is principally permitted, the requirements of this Section 140 may be modified
19 or waived pursuant to the procedures and criteria set forth in Sections 307(h) and 329. This
20 administrative exception does not apply to new additions to historic buildings.

21 (2) *For Accessory Dwelling Units, the requirements of this Section 140 may be*
22 *modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and*
23 *207(c)(4)(G).*

24 **155.1. BICYCLE PARKING: DEFINITIONS AND STANDARDS.**

25 * * * *

1 (b) **Standards for Location of Bicycle Parking Spaces.** These standards apply to
2 all bicycle parking subject to Section 155.2, as well as bicycle parking for City-owned and
3 leased buildings, parking garages and parking lots subject to Section 155.3. Bicycle racks
4 shall be located in highly visible areas as described in subsections below in order to maximize
5 convenience and minimize theft and vandalism. *For Accessory Dwelling Units, the requirements*
6 *of this subsection (b) may be modified or waived pursuant to the procedures and criteria set forth in*
7 *Sections 307(l) and 207(c)(4)(G).*

8 * * * *

9 (c) **Design Standards for Bicycle Parking Spaces.** These design standards apply
10 to all bicycle parking spaces subject to Sections 155.2 and 155.3. Bicycle parking shall follow
11 the design standards established in Zoning Administrator Bulletin No. 9, which includes
12 specific requirements on bicycle parking layout and acceptable types of Class 1 and Class 2
13 bicycle parking spaces. *For Accessory Dwelling Units, the requirements of this subsection (c) may*
14 *be modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and*
15 *207(c)(4)(G).*

16 * * * *

17 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

18 * * * *

19 (c) **Exceptions to Dwelling Unit Density Limits.** An exception to the calculations
20 under this Section 207 shall be made in the following circumstances:

21 * * * *

22 (4) **Accessory Dwelling Units in Multifamily Buildings; Accessory**
23 **Dwelling Units in Single-Family Homes That Do Not Strictly Meet the Requirements in**
24 **Subsection (c)(6).**

1 (A) **Definition.** An “Accessory Dwelling Unit” (ADU) is defined in
2 Section 102.

3 (B) **Applicability.** This subsection (c)(4) shall apply to the construction
4 of Accessory Dwelling Units on all lots located within the City and County of San Francisco in
5 areas that allow residential use, except that construction of an Accessory Dwelling Unit is
6 regulated by subsection (c)(6), and not this subsection (c)(4), if all of the following
7 circumstances exist:

8 (i) only one ADU will be constructed;

9 (ii) the ADU will be located on a lot that is zoned for single-
10 family or multifamily use and contains an existing single-family dwelling;

11 (iii) the ADU will be constructed entirely within the “living area”
12 (as defined in subsection (c)(6)(B)(iii)) or the buildable area of an existing single-family home,
13 or *constructed* within the built envelope of an existing and authorized auxiliary structure on the
14 same lot;

15 (iv) the ADU will strictly meet the requirements set forth in
16 subsection (c)(6) without requiring a waiver of Code requirements pursuant to subsection
17 (c)(4)(G); and

18 (v) the permit application does not include seismic upgrade
19 work pursuant to subsection (c)(4)(F);

20 ~~provided, however, that the Department shall not approve an application for construction of an~~
21 ~~Accessory Dwelling Unit in any building regulated by this subsection (c)(4) where a tenant has been~~
22 ~~evicted pursuant to Administrative Code Sections 37.9(a)(9) through 37.9(a)(14) under a notice of~~
23 ~~eviction served within 10 years prior to filing the application for a building permit to construct the~~
24 ~~ADU or where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a~~
25 ~~notice of eviction served within five years prior to filing the application for a building permit to~~

1 *construct the ADU. This provision shall not apply if the tenant was evicted under Section 37.9(a)(11) or*
2 *37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the unit*
3 *after the temporary eviction or (B) have submitted to the Department and to the Rent Board a*
4 *declaration from the property owner or the tenant certifying that the property owner notified the tenant*
5 *of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.*

6 (C) **Controls on Construction.** An Accessory Dwelling Unit is
7 permitted to be constructed under the following conditions:

8 (i) For lots that have four existing Dwelling Units or fewer, one
9 ADU is permitted; for lots that have more than four existing Dwelling Units or are undergoing
10 seismic retrofitting under subsection (c)(4)(F) below, there is no limit on the number of ADUs
11 permitted; provided, however, that the Department shall not approve an application for construction
12 of an Accessory Dwelling Unit in any building regulated by this subsection (c)(4) where a tenant has
13 been evicted pursuant to Administrative Code Sections 37.9(a)(9) through 37.9(a)(14) under a notice of
14 eviction served within 10 years prior to filing the application for a building permit to construct the
15 ADU or where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a
16 notice of eviction served within five years prior to filing the application for a building permit to
17 construct the ADU. This provision shall not apply if the tenant was evicted under Section 37.9(a)(11)
18 or 37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the unit
19 after the temporary eviction or (B) have submitted to the Department and to the Rent Board a
20 declaration from the property owner or the tenant certifying that the property owner notified the tenant
21 of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.

22 (ii) Except as provided in subsections (iii) and (iv) below, A
23 Accessory Dwelling Unit shall be constructed entirely within the built envelope of an existing
24 building or within the built envelope of an existing and authorized *stand-alone garage, storage*
25 *structure, or other* auxiliary structure on the same lot, as the built envelope in either case

1 existed three years prior to the time the application was filed for a building permit to construct
2 the ADU. For purposes of this provision, the "built envelope" shall include the open area under
3 a cantilevered room or room built on columns; decks, except for decks ~~that encroach into the~~
4 ~~required rear yard, or decks~~ that are supported by columns or walls other than the building wall
5 to which ~~it is~~ they are attached and are multi-level or more than 10 feet above grade; and
6 lightwell infills provided that the infill will be against a blank neighboring wall at the property
7 line and not visible from any off-site location; as these spaces exist as of July 11, 2016 ~~and~~
8 ~~except for any of these spaces that encroach on the required rear yard.~~ An ADU constructed entirely
9 within the existing built envelope, as defined in this subsection (ii), of an existing building or authorized
10 auxiliary structure on the same lot, or where an existing stand-alone garage or storage structure has
11 been expanded to add dormers, is exempt from the notification requirements of Section 311 of this
12 Code.

13 (iii) One ADU over the density limits in this Code is allowed in a
14 newly-built residential structure of three units or less as a component of the new construction.

15 (iv) When a stand-alone garage or storage structure is being
16 converted to an ADU, an expansion to the envelope is allowed to add dormers.

17 (v) ~~(iii)~~ An Accessory Dwelling Unit shall not be constructed using
18 space from an existing Dwelling Unit except that an ADU may expand into habitable space on
19 the ground or basement floors provided that it does not exceed 25% of the gross square
20 footage of such space. The Zoning Administrator may waive this 25% limitation if (a) the
21 resulting space would not be usable or would be impractical to use for other reasonable uses
22 included but not limited to storage or bicycle parking or (b) waiving the limitation would help
23 relieve any negative layout issues for the proposed ADU.

24 (vi) ~~(iv)~~ A building undergoing seismic retrofitting may be eligible
25 for a height increase pursuant to ~~S~~ subsection (c)(4)(F) below.

1 (vii) ~~(vi)~~ Notwithstanding any other provision of this Code, an
2 Accessory Dwelling Unit authorized under this Section 207(c)(4) may not be merged with an
3 original unit(s).

4 (viii) ~~(vi)~~ An Accessory Dwelling Unit shall not be permitted in any
5 building in a Neighborhood Commercial District or in the Chinatown Community Business or
6 Visitor Retail Districts if it would eliminate or reduce a ground-story retail or commercial
7 space;.

8 (D) **Prohibition of Short-Term Rentals.** An Accessory Dwelling Unit
9 shall not be used for Short-Term Residential Rentals under Chapter 41A of the Administrative
10 Code, which restriction shall be recorded as a Notice of Special Restriction on the subject lot.

11 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of
12 Article 9 of the Subdivision Code, a lot with an Accessory Dwelling Unit authorized under this
13 Section 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold
14 or separately financed pursuant to any condominium plan, housing cooperative, or similar
15 form of separate ownership; provided, however, that this prohibition on separate sale or
16 finance of the ADU shall not apply to a building that (i) within three years prior to July 11, 2016
17 was an existing condominium with no Rental Unit as defined in Section 37.2(r) of the
18 Administrative Code, and (ii) has had no evictions pursuant to Sections 37.9(a) through
19 37.9(a)(14) of the Administrative Code within 10 years prior to July 11, 2016.

20 (F) **Buildings Undergoing Seismic Retrofitting.** For Accessory
21 Dwelling Units on lots with a building undergoing mandatory seismic retrofitting in compliance
22 with Chapter 4D of the Existing Building Code or voluntary seismic retrofitting in compliance
23 with the Department of Building Inspection's Administrative Bulletin 094, the following
24 additional provision applies: If allowed by the Building Code, a building in which an Accessory
25

1 Dwelling Unit is constructed may be raised up to three feet to create ground floor ceiling
2 heights suitable for residential use. Such a raise in height

3 (i) shall be exempt from the notification requirements of
4 Sections 311 and 312 of this Code; and

5 (ii) may expand a noncomplying structure, as defined in
6 Section 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without
7 obtaining a variance for increasing the discrepancy between existing conditions on the lot and
8 the required standards of this Code.

9 (iii) on lots where an ADU is added in coordination with a
10 building undergoing mandatory seismic retrofitting in compliance with Chapter 4D of the
11 Existing Building Code or voluntary seismic retrofitting in compliance with the Department of
12 Building Inspection's Administrative Bulletin 094, the building and the new ADU shall maintain
13 any eligibility to enter the condo-conversion lottery and may only be subdivided if the entire
14 property is selected on the condo-conversion lottery.

15 (iv) pursuant to subsection (4)(C)(i), there is no limit on the
16 number of ADUs that are permitted to be added in connection with a seismic retrofit.

17 (G) **Waiver of Code Requirements; Applicability of Rent**

18 **Ordinance.** Pursuant to the provisions of Section 307(l) of this Code, the Zoning
19 Administrator may grant an Accessory Dwelling Unit a complete or partial waiver of the
20 density limits and *off-street* parking, *bicycle parking*, rear yard, exposure, or open space
21 standards of this Code. If the Zoning Administrator grants a complete or partial waiver of the
22 requirements of this Code and the subject lot contains any Rental Units at the time an
23 application for a building permit is filed for construction of the Accessory Dwelling Unit(s), the
24 property owner(s) shall enter into a Regulatory Agreement with the City under subsection
25 (c)(4)(H) subjecting the ADU(s) to the San Francisco Residential Rent Stabilization and

1 Arbitration Ordinance (Chapter 37 of the Administrative Code) as a condition of approval of
2 the ADU(s). For purposes of this requirement, Rental Units shall be as defined in Section
3 37.2(r) of the Administrative Code.

4 (H) **Regulatory Agreements.** A Regulatory Agreement required by
5 subsection (c)(4)(G) as a condition of approval of an Accessory Dwelling Unit shall contain the
6 following:

7 (i) a statement that the ADU(s) are not subject to the Costa
8 Hawkins Rental Housing Act (California Civil Code Section 1954.50) because, under Section
9 1954.52(b), the owner has entered into this agreement with the City in consideration for a
10 complete or partial waiver of the density limits, and/or *off-street* parking, *bicycle parking*, rear
11 yard, exposure, or open space standards of this Code or other direct financial contribution or
12 other form of assistance specified in California Government Code Sections 65915 et seq.
13 ("Agreement"); and

14 (ii) a description of the complete or partial waiver of Code
15 requirements granted by the Zoning Administrator or other direct financial contribution or form
16 of assistance provided to the property owner; and

17 (iii) a description of the remedies for breach of the Agreement
18 and other provisions to ensure implementation and compliance with the Agreement.

19 (iv) The property owner and the Planning Director (or *his the*
20 *Director's* designee), on behalf of the City, will execute the Agreement, which shall be
21 reviewed and approved by the City Attorney's Office. The Agreement shall be executed prior
22 to the City's issuance of the First Construction Document for the project, as defined in Section
23 107A.13.1 of the San Francisco Building Code.

24 (v) Following execution of the Regulatory Agreement by all
25 parties and approval by the City Attorney, the Regulatory Agreement or a memorandum

1 thereof shall be recorded against the property and shall be binding on all future owners and
2 successors in interest.

3 Any Regulatory Agreement entered into under this Section 207(c)(4) shall not preclude
4 a landlord from establishing the initial rental rate pursuant to Section 1954.53 of the Costa
5 Hawkins Rental Housing Act.

6 (l) **Monitoring Program.**

7 (i) **Monitoring and Enforcement of Unit Affordability.** The
8 Department shall establish a system to monitor the affordability of the Accessory Dwelling
9 Units authorized to be constructed by this subsection 207(c)(4) and shall use such data to
10 enforce the requirements of the Regulatory Agreements entered into pursuant to subsection
11 (c)(4)(H). Property owners shall provide the Department with rent information as requested by
12 the Department. The Board of Supervisors recognizes that property owners and tenants
13 generally consider rental information sensitive and do not want it publicly disclosed. The intent
14 of the Board is for the Department to obtain the information for purposes of monitoring and
15 enforcement but that its public disclosure is not linked to specific individuals or units. The
16 Department shall consult with the City Attorney's Office with respect to the legal requirements
17 to determine how best to achieve the intent of the Board.

18 (ii) **Monitoring of Prohibition on Use as Short Term**

19 **Rentals.** The Department shall collect data on the use of Accessory Dwelling Units authorized
20 to be constructed by this ~~S~~ subsection (c)(4) as Short-Term Residential Rentals, as that term is
21 defined in Administrative Code Section 41A.4, and shall use such data to evaluate and
22 enforce Notices of Special Restriction pursuant to subsection 207(c)(4)(D) and the
23 requirements of Administrative Code Chapter 41A.

24 (iii) **Department Report.** The Department shall publish a report
25 annually until April 1, 2019, that describes and evaluates the types of units being developed

1 and their affordability rates, as well as their use as Short-Term Residential Rentals. The report
2 shall contain such additional information as the Director or the Board of Supervisors
3 determines would inform decision makers and the public on the effectiveness and
4 implementation of this subsection (c)(4) and include recommendations for any amendments to
5 the requirements of this Section 207(c)(4). The Department shall transmit this report to the
6 Board of Supervisors for its review and public input. In subsequent years, this information on
7 Accessory Dwelling Units shall be reported annually in the Housing Inventory.

8 * * * *

9 (6) **Accessory Dwelling Units in Existing Single-Family Homes.**

10 (A) **Applicability.** This subsection (c)(6) shall apply to the construction of
11 Accessory Dwelling Units (as defined in Section 102) in existing single-family homes that
12 meet the requirements of this subsection. An ADU constructed pursuant to this subsection is
13 considered a residential use that is consistent with the General Plan and the zoning
14 designation for the lot. Adding one ADU to an existing single-family home *shall does* not
15 exceed the allowable density for the lot. If construction of the ADU will not meet the
16 requirements of this subsection and the ADU cannot be constructed without a waiver of Code
17 requirements pursuant to subsection (c)(4)(G), the ADU is regulated pursuant to subsection
18 (c)(4) and not this subsection (c)(6).

19 (B) **Lots Zoned for Single-Family or Multifamily Use and Containing an**
20 **Existing Single-Family Home; Controls on Construction.** An Accessory Dwelling Unit
21 located in a residential zoning district and constructed pursuant to this subsection (c)(6) shall
22 meet all of the following:

23 (i) The ADU will strictly meet the requirements set forth in this
24 subsection (c)(6)(~~BC~~) without requiring a waiver of Code requirements pursuant to subsection
25 (c)(4)(G).

1 (ii) The permit application does not include seismic upgrade work
2 pursuant to subsection (c)(4)(F).

3 (iii) Only one ADU will be constructed that is entirely within either the
4 “living area” or the buildable area of an existing single-family home; or, *except as provided in*
5 *subsection (C)(x) below*, within the built envelope of an existing and authorized auxiliary
6 structure on the same lot. “Living area” means (as defined in Section 65852.2(i)(1) of the
7 California Government Code) “the interior habitable area of a dwelling unit including
8 basements and attics, but does not include a garage or any accessory structure.”

9 (iv) If contained within the existing space of a single-family residence
10 or accessory structure, the ADU must have independent exterior access from the existing
11 residence or accessory structure, and side and rear setbacks sufficient for fire safety.

12 (v) If construction of the ADU will have adverse impacts on a property
13 listed in the California Register of Historic Places or any other known historical resource, the
14 Department shall require modification of the proposed project to the extent necessary to
15 prevent or mitigate such impacts.

16 (vi) The Department shall apply any design guidelines in the Code to
17 the proposed project and review the design of the proposed project to ensure architectural
18 compatibility with existing buildings on the subject lot.

19 (vii) No setback is required for an existing garage that is converted to
20 an ADU.

21 (viii) All applicable requirements of San Francisco’s health and safety
22 codes shall apply, including but not limited to the Building and Fire Codes.

23 (ix) No parking is required for the ADU. If existing parking is
24 demolished in order to construct the ADU, only the parking space required by this Code for
25 the existing single-family home must be replaced. If replacement parking is required, it may be

1 located in any configuration on the lot including but not limited to covered, uncovered, or
2 tandem space or by the use of mechanical automobile parking lifts.

3 (x) When a stand-alone garage or storage structure is being converted to an
4 ADU, an expansion to the envelope is allowed to add dormers.

5 (C) **Permit Application Review and Approval.** Except as authorized by
6 subsections (c)(6)(B)(v) and (vi), the Department shall approve an application for a permit to
7 construct an Accessory Dwelling Unit within 120 days from receipt of the complete application,
8 without modification or disapproval, if the proposed construction fully complies with the
9 requirements set forth in subsection (c)(6)(~~BC~~).

10 (D) **Prohibition of Short-Term Rentals.** An Accessory Dwelling Unit
11 authorized under this subsection (c)(6) shall not be used for Short-Term Residential Rentals
12 under Chapter 41A of the Administrative Code. This restriction shall be recorded as a Notice
13 of Special Restriction on the subject lot.

14 (E) **Rental; Restrictions on Subdivisions.**

15 (i) An ADU constructed pursuant to this subsection (c)(6) may be
16 rented and is subject to all applicable provisions of the Residential Rent Stabilization and
17 Arbitration Ordinance (Chapter 37 of the Administrative Code).

18 (ii) Notwithstanding the provisions of Article 9 of the Subdivision
19 Code, a lot with an Accessory Dwelling Unit authorized under this subsection (c)(6) shall not
20 be subdivided in a manner that would allow for the ADU to be sold or separately financed
21 pursuant to any condominium plan, housing cooperative, or similar form of separate
22 ownership; ~~provided, however, that this prohibition on separate sale or finance of the ADU shall not~~
23 ~~apply to a building that within three years prior to July 11, 2016, was an existing condominium with no~~
24 ~~Rental Unit as defined in Section 37.2(r) of the Administrative Code, and also within 10 years prior to~~
25

1 ~~July 11, 2016 had no evictions pursuant to Sections 37.9(a) through 37.9(a)(14) of the Administrative~~
2 ~~Code.~~

3 (F) **Department Report.** In the report required by subsection (c)(4)(l)(iii), the
4 Department shall include a description and evaluation of the number and types of units being
5 developed pursuant to this subsection (c)(6), their affordability rates, and such other
6 information as the Director or the Board of Supervisors determines would inform decision
7 makers and the public.

8 **SEC. 207.3. AUTHORIZATION OF DWELLING UNITS CONSTRUCTED WITHOUT A**
9 **PERMIT IN AN EXISTING BUILDING ZONED FOR RESIDENTIAL USE.**

10 Notwithstanding Section 207.2 or any other provision of this Code, certain dwelling
11 units that were constructed without benefit of permit in an existing residential building or in an
12 ancillary structure located on the same lot may be granted legal status subject to the
13 conditions and procedures set forth below. For purposes of this Section 207.3, a dwelling unit
14 shall not include single room occupancy units.

15 (b) **Scope.**

16 (1) Except as provided in subsection (2) below, this Section 207.3 shall apply
17 to an existing building or an ancillary structure on the same lot, that is located in a district
18 where residential use is principally permitted, and that has one or more dwelling units that
19 were constructed prior to January 1, 2013 without benefit of permit and used as residential
20 space. ~~One~~ Any of the unauthorized dwelling units ~~per on the lot that~~ meeting this threshold
21 requirement and the requirements of this Section may be granted legal status this Section,
22 regardless of the density limits of the zoning district.

23 * * * *

1 **SEC. 307. OTHER POWERS AND DUTIES OF THE ZONING ADMINISTRATOR.**

2 In addition to those specified in Sections 302 through 306 of this Code, the Zoning
3 Administrator shall have the following powers and duties in administration and enforcement of
4 this Code.

5 * * * *

6 (l) **Exceptions from Certain Specific Code Standards Through Administrative**
7 **Review for Accessory Dwelling Units Constructed Pursuant to Section 207(c)(4) of this**
8 **Code.** The Zoning Administrator may allow complete or partial relief from the density limits
9 and from the off-street parking, bicycle parking, rear yard, exposure, and/or open space
10 requirements of this Code when modification of the requirement would facilitate the
11 construction of an Accessory Dwelling Unit, as defined in Section 102 and meeting the
12 requirements of Section 207(c)(4) of this Code.

13 (1) **Exposure.** The exposure requirements of Section 140 apply, except that
14 subsection (a)(2) may be satisfied through windows facing an open area that is at least 225
15 square feet, with no horizontal direction being less than nine feet, and 15-feet-in-every-horizontal
16 direction that is not required to expand on subsequent floors. Permitted obstructions that are
17 outlined in Section 140 and fire escapes, not projecting more than 4 feet 6 inches, would be allowed in
18 such open area. In considering any request for complete or partial relief from these Code
19 requirements, the Zoning Administrator shall facilitate the construction of such Accessory
20 Dwelling Units to the extent feasible and shall consider any criteria elsewhere in this Section
21 307 that he or she determines to be applicable. Nothing in this Section shall be interpreted as
22 allowing for an existing nonconforming non-conforming use to be deemed conforming.

23 (2) **Bicycle Parking.** The requirements of Sections 155.1 and 155.2 shall apply,
24 except that (A) in a building with no new corridors, an existing three-foot corridor may satisfy the
25

1 requirement of a legal nonconforming access corridor for purposes of bicycle parking access in
2 existing buildings and (B) vertical bicycle parking may satisfy up to 100% of required bicycle parking.

3 **SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH**
4 **DEMOLITION, MERGER AND CONVERSION.**

5 * * * *

6 (c) **Applicability; Exemptions.**

7 (1) Any application for a permit that would result in the Removal of one or
8 more Residential Units or Unauthorized Units is required to obtain Conditional Use
9 authorization. For Unauthorized Units, this Conditional Use authorization will not be required for
10 Removal if the unit cannot be legalized under any available provision of this Code. The application
11 for a replacement building or alteration permit shall also be subject to Conditional Use
12 requirements.

13 * * * *

14 (g) **Conditional Use Criteria.**

15 * * * *

16 (6) **Removal of Unauthorized Units.** In addition to the criteria set forth in
17 Subsections (g)(1) through (g)(4) above, the Planning Commission shall consider the criteria
18 below in the review of applications for removal of Unauthorized Units:

19 (A) ~~whether the Unauthorized Unit or Units are eligible for legalization~~
20 ~~under Section 207.3 of this Code;~~

21 ~~(B)~~ whether the costs to legalize the Unauthorized Unit or Units under
22 the Planning, Building, and other applicable Codes is reasonable based on how such cost
23 compares to the average cost of legalization per unit derived from the cost of projects on the
24 Planning Department's Master List of Additional Dwelling Units Approved required by Section
25 207.3(k) of this Code;

1 (BE) whether it is financially feasible to legalize the Unauthorized Unit or
2 Units. Such determination will be based on the costs to legalize the Unauthorized Unit(s)
3 under the Planning, Building, and other applicable Codes in comparison to the added value
4 that legalizing said Units would provide to the subject property. The gain in the value of the
5 subject property shall be based on the current value of the property with the Unauthorized
6 Unit(s) compared to the value of the property if the Unauthorized Unit(s) is/are legalized. The
7 calculation of the gain in value shall be conducted and approved by a California licensed
8 property appraiser. Legalization would be deemed financially feasible if gain in the value of
9 the subject property is equal to or greater than the cost to legalize the Unauthorized Unit.

10 (CD) If no City funds are available to assist the property owner with the
11 cost of legalization, whether the cost would constitute a financial hardship.

12
13 Section 3. The Building Code is hereby amended by revising Section 106A.4.9, to read
14 as follows:

15 **106A.4.9 Preapplication plan review or inspection.** When a party wishes to discuss
16 specific design issues or submit preliminary designs for review and comment by the
17 Department prior to formal application for a permit, a request for preapplication plan review
18 must be submitted in writing to the Building Official. See Section 110A, Table 1A-B – Other
19 Building Permit and Plan Review Fees – for applicable fees. Payment of the minimum fee
20 must be submitted with the letter of request.

21 **106A.4.9.1. Accessory Dwelling Units.** A preapplication plan review meeting for
22 construction of an Accessory Dwelling Unit under Planning Code Section 207(c)(4) or 207(c)(6) shall
23 include representatives from the Department of Building Inspection, Fire Department, and Planning
24 Department. The representatives of these Departments shall review with the applicant all applicable
25 state and local Code requirements as well as acceptable Code equivalencies.


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Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

Section 6. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed to submit a copy of this ordinance to the California Department of Housing and Community Development within 60 days following adoption pursuant to Section 65852.2(h) of the California Government Code.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
JUDITH A. BOYAJIAN
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning, Building Codes - Accessory Dwelling Units]

Ordinance amending the Planning Code to authorize the Zoning Administrator to waive or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), allow more than one unauthorized unit constructed without a permit to be legalized, exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, allow conversion of an existing stand-alone garage or storage structure to an ADU and expansion of the existing building envelope to add dormers, eliminate the street tree requirement for an ADU, and allow one ADU to be added to a new residential building of three units or less as a component of the new construction; amending the Building Code to provide for a preapplication plan review for ADUs; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this ordinance to the California Department of Housing and Community Development.

Existing Law

Planning Code Section 102 defines "Accessory Dwelling Unit" (ADU) and Sections 207(c)(4) and 207(c)(6) establish the requirements for constructing an ADU in areas in San Francisco that are zoned for residential use. The provisions in (c)(6) apply only to existing single-family homes that strictly meet the state law's ADU requirements. An ADU must be constructed entirely within the existing built envelope, "living area," or buildable area of an existing building or within the existing built envelope of an existing and authorized auxiliary structure on the same lot. Sections 207(c)(4) and 307(l) authorize the Zoning Administrator to modify or waive the density limits, parking, rear yard, exposure, or open space standards of the Code in order to facilitate the construction of an ADU. Section 207.3 authorizes the legalization of one dwelling unit per lot that was constructed prior to January 1, 2013 without the required permit.

Section 138.1 establishes the requirements for streetscape and pedestrian improvements, including the obligation to plant and maintain street trees; pursuant to the Article 2 Zoning Control Tables, planting street trees is required for projects in areas zoned for residential use. Section 140 requires all dwelling units to face/have exposure to an open area that meets specified minimum requirements. Section 155.1 contains the requirements and standards for bicycle parking. Section 317, among other things, requires a Conditional Use authorization for the Removal of an unauthorized dwelling unit. Building Code Section 106A.4.9 establishes a process for preapplication plan review or inspection if a party wants to discuss specific design issues or submit preliminary designs for review and comment prior to formal application for a permit.

Amendments to Current Law

Section 102 is amended to make the definition consistent with the language in Sections 207(c)(4) and (c)(6). Section 207(c)(4) is amended to provide that construction of an ADU is not subject to Section 311 notification if it is entirely within the “built envelope” of the existing structure, which is defined to include a cantilevered room and other specified areas, or if the envelope of a converted stand-alone garage, storage structure, or other existing auxiliary structure is expanded to add dormers for the ADU. Section 207(c)(4) is amended to allow an ADU in new construction. Section 207.3 is amended to allow the legalization of more than one unauthorized unit on the lot if the unit can meet all the Code requirements.

Section 138.1 is amended to exempt construction of an ADU from the street tree requirement. Sections 140, 155.1, and 307(l) are amended to authorize the Zoning Administrator to modify or waive the exposure and bicycle parking requirements in order to facilitate the construction of an ADU. Section 317 is amended to provide that if an unauthorized unit can be legalized under any available provision of the Code, its Removal requires a Conditional Use authorization. Building Code Section 106A.4.9 is amended to provide for a preapplication consultation at which the Planning, Building, and Fire Departments review with the applicant for an ADU all applicable state and local Code requirements as well as acceptable Code equivalencies

Background Information

The State Legislature has declared that second units (ADUs) are a valuable form of housing in California for many reasons. They are also an affordable type of housing because they do not include the costs of purchasing land or require major new infrastructure. In San Francisco, an ADU can be added to an existing building without changing the character of the neighborhood. San Francisco first enacted an ADU ordinance in 2015 and since then has updated its ADU program in response to amendments to the state law.

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